IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12211 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESHBHAI NARSINHBHAI PATEL

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 12211 of 2001

MR DF AMIN for Petitioner No. 1

MR DN PATEL for Respondents No. 1-2

MR KP RAVAL AGP for Respondent No. 3

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 23/01/2002

ORAL JUDGEMENT

Rule. By consent of the counsel appearing in the matter, Rule is fixed forthwith. Heard Mr. Amin,

learned advocate for the petitioner, Mr. D.N. Patel, learned Standing Counsel for the for the respondent no. 2 and Mr. K.P. Raval, learned AGP for the respondent no. 3.

2. In this petition, the petitioner has prayed for seeking direction to respondent no. 2 Passport Authority to issue passport of the petitioner forthwith. In this petition, the petitioner has annexed various documents namely, the copy of the letter dated 5th October, 2001 issued by U.S. Consulate General, Immigrant Visa Unit and the copy of the operative order passed by the learned Magistrate in Criminal Case No. 893/98. Mr. Amin during the hearing has submitted that the petitioner has made application to the respondent passport authority for obtaining passport on 28th October, 2000 and the authority has still not issued the passport. As found from the petition, the petitioner and other co-accused were convicted by the learned J.M.F.C., Borsad as per judgement and order of conviction and sentence recorded on 8th October, 2001 convicting the accused for the offence under Section 323 of the I.P.C. and accused were ordered to suffer simple imprisonment for two months while disposing of criminal case no. 893/98. The petitioner has also submit that the petitioner has challenged the said order of conviction and sentence recorded by the learned JMFC by preferring appeal being Criminal Appeal No. 48 of 2001, which is pending before the learned Sessions Judge, Nadiad. The purpose for filing this petition is that the petitioner has received immigration VISA call from the US Consulate General, Mumbai and the interview was fixed earlier on 29.11.2001 and the same is now rescheduled and the date is fixed on 30.1.2002 and in absence of passport, the petitioner's file for VISA will be closed. As found from the order passed by brother judge (Coram: Ravi R. Tripathi, J.), which are reproduced as under "-

> "Looking to the facts averred in paragraph 5 of the petition, the authorities are directed to prepare the passport of the petitioner and report to this court on or before 21st January, 2002. S.O. to 22.1.2002. D.S. Permitted."

3. Mr. Patel, learned Standing Counsel for the respondent Passport authority has informed the registry of this Court that as per the order passed by the Court, the passport of the petitioner is already prepared and as the matter was not reached for hearing yesterday, he submitted that passport is kept ready and the same is kept with the passport authority. During the submission,

he has highlighted that the passport authority has not entertained the application of the petitioner, which was made on 20th October, 2000 as it was found from the police inquiry that the petitioner was involved in a criminal case, which was pending before the Competent Court and according to him, the petitioner while making an application for obtaining passport has not disclosed this important aspect and in view of Section 6, sub-section 2(f), the application of the petitioner was not entertained. It is also relevant for this Court to consider Section 6(f) of the Passport Act, 1967.

Section 6 : Refusal of passports, travel documents etc :-

1. .....

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under Cl.(c) of the sub-section 2 of Sec. 5 on any one or more of the following grounds, and on no other ground, namely;

(a) .....

(b) .....

(c) .....

(d) .....

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India ;

(g) .....

(h) .....

(i) .....

4. In view of the submission made by Mr. Patel, the petitioner has while submitting the application for passport has not declared the fact about the criminal case pending against him and when the application for passport was processed for inquiry, the passport authority was informed by police by disclosing the fact that the criminal case was instituted against the petitioner and the same is pending. The passport authority has justified in not issuing the passport and even under the Rules, such person is also required to be imposed penalty etc. by the passport authority. It is very clear that while making an application for obtaining passport the information about the criminal case is pending against him is withheld. It is also brought to my notice by Mr. Patel that such person is also required to submit declaration and undertaking before the authority and Mr. Patel highlighted that as per the Rules, the maximum penalty is prescribed is Rs. 5000/-. On going through the provisions of Section 6(2)(e), it is not attracted in the present case. However, clause (f) indicates that criminal proceedings is pending against the petitioner. The conviction of the petition is under Section 323 of the I.P.C. and the sentence imposed on the accused is simple imprisonment for two months and against the said conviction, the appeal is pending before the Sessions Court.

5. In para-8 of the petition, the petitioner has averred that the petitioner required passport only for the purpose of enabling him to attend the Visa call which is scheduled on 30.1.2002 and the petitioner has further undertaken that he will deposit the passport with the respondent no. 3 namely the District Superintendent of Police Anand.

6. Considering the above facts, this court has to consider that whether the petitioner is entitled to the reliefs prayed for in this petition. As observed hereinabove, the authority has not issued the passport to the petitioner as the petitioner has not disclosed the fact about the criminal case is pending against him while making application before the authority on 20th October, 2000. One can take judicial note that even accused person, who has committed offence and during the pendency of the trial or appeal, who released on bail, having a passport, the Court generally imposed condition to surrender his passport. In the present case, the petitioner is convicted for the offence under Section 323 of the Indian Penal Code and ordered to suffer simple imprisonment for two months and his appeal is pending

before the Sessions Court and the petitioner must have been released on bail by imposing certain condition by the Competent Court and equally the accused person is not permitted to leave territory of India and accordingly unless and until the petitioner without knowing the Court not permitted to leave India. In the present case, the purpose for obtaining passport is to attend the VISA call, which is fixed on 30.1.2002 and the petitioner is not required to deny such opportunity once as per the earlier order, the passport authority was directed to prepare the passport, which is ready. Mr. Amin, learned advocate appearing for the petitioner undertakes that the petitioner is prepare to pay even maximum penalty or costs as well as submit undertaking and also make declaration before the authority as per the Rules. Considering the submission of Mr. Amin this court is inclined that the respondent passport authority by imposing maximum penalty to the petitioner and as per the Rule, the petitioner shall file undertaking as well as make declaration before the authority and even respondent passport authority may have imposed costs to the petitioner, be directed to hand over the passport to the petitioner and the petitioner is directed that at the time of attending the interview call before the Consulate General, Mumbai, he will disclose that passport authority has issued passport as directed by the Hon'ble High Court and after attending the VISA call, immediately within two days i.e. on 1.2.2002, the petitioner shall surrender his passport to the Regional Passport Officer, Ahmedabad.

7. Mr. Amin, learned advocate for the petitioner has stated that the petitioner will pay the penalty amount as well as make declaration and submit undertaking before the authority immediately. Accordingly, respondent passport authority is directed to complete all the formalities on or before 28.1.2002. With these observations, this petition is disposed of. Rule is discharged. However, there shall be no order as to costs.

(D.K.Trivedi,J.)

pallav